

From: [Atkins, Blake](#)
To: [Hah, Josephine](#)
Cc: [Villarreal, Chris](#); [Phillips, Pam](#); [Edlund, Carl](#); [Meyer, John](#); [Banipal, Ben](#)
Subject: RE: Question Sets for GAO - Questions for EPA Regions about Superfund Enterprise Management System (SEMS) National Priorities List (NPL) Data
Date: Wednesday, December 13, 2017 3:45:43 PM
Attachments: [Region 6 Questions on SEMS and data for written responses V12.docx](#)

Josephine, here is our final response for GAO. Thank you for assisting with this effort and thank you for forwarding our response to GAO. We will be following up separately with the Jackpile response and associated documents.

Blake Atkins, Chief
LA/NM/OK Remediation Section
EPA Region 6 Superfund Division
1445 Ross Ave (6SF-RL)
Dallas, TX 75202
214-665-2297 w
214-406-5907 c

From: Hah, Josephine
Sent: Wednesday, December 13, 2017 2:09 PM
To: Atkins, Blake ; Meyer, John ; Banipal, Ben
Cc: Villarreal, Chris
Subject: RE: Question Sets for GAO - Questions for EPA Regions about Superfund Enterprise Management System (SEMS) National Priorities List (NPL) Data
Hi Blake,
How is the response coming along? Will we be able to provide to GAO this afternoon?
Thanks,
Josephine

From: Hah, Josephine
Sent: Monday, December 11, 2017 4:44 PM
To: Atkins, Blake <atkins.blake@epa.gov>; Meyer, John <Meyer.John@epa.gov>; Banipal, Ben <banipal.ben@epa.gov>
Cc: Villarreal, Chris <villarreal.chris@epa.gov>
Subject: RE: Question Sets for GAO
Yes – on the extension to Wednesday, December 13th noon if possible. The GAO auditor, Emily Norman, will be in and out Wednesday and Thursday and would like to ensure she has sufficient time to review our response before the meeting on Friday.
Thanks,
Josephine

From: Atkins, Blake
Sent: Monday, December 11, 2017 9:00 AM
To: Hah, Josephine <Hah.Josephine@epa.gov>; Meyer, John <Meyer.John@epa.gov>; Banipal, Ben <banipal.ben@epa.gov>
Subject: RE: Question Sets for GAO
Josephine,
I'm cleaning up this draft and will run my draft by Carl and Pam this morning. I'll send you the final draft this afternoon and have you forward to GAO.

From: Hah, Josephine
Sent: Monday, December 11, 2017 8:43 AM

To: Meyer, John <Meyer.John@epa.gov>; Atkins, Blake <Atkins.Blake@epa.gov>; Banipal, Ben <banipal.ben@epa.gov>

Subject: FW: Question Sets for GAO

John, Blake, Ben –

Just making sure we are good on this response on **Questions for EPA Regions about Superfund Enterprise Management System (SEMS) National Priorities List (NPL) Data – due tomorrow, December 12th**. Will you be forwarding to me or will you be sending to GAO?

I've added a teleconference line to the meeting on Friday, December 15th.

Thanks,
Josephine

From: Hah, Josephine

Sent: Friday, December 08, 2017 9:42 AM

To: Atkins, Blake <atkins.blake@epa.gov>; Meyer, John <Meyer.John@epa.gov>; Banipal, Ben <banipal.ben@epa.gov>; Turner, LaDonna <turner.ladonna@epa.gov>; Villarreal, Chris <villarreal.chris@epa.gov>; Sanchez, Petra <sanchez.petra@epa.gov>; Cook, Brenda <cook.brenda@epa.gov>; Gee, Randy <Gee.Randy@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Crossland, Ronnie <Crossland.Ronnie@epa.gov>; Webster, Susan <webster.susan@epa.gov>

Subject: RE: Question Sets for GAO

John/Blake,

Reminder: **Superfund Enterprise Management System (SEMS) National Priorities List (NPL) Data (attached) – Written response is due Tuesday, December 12th** (with extension granted). You may send to me and I'll forward to GAO, Emily Norman, or you may send and cc me, whichever you prefer. Follow-up meeting to discuss questions/responses with GAO is on Friday, December 15th at 10:00 – 11:30am, East conference room 10th floor.

Thanks,
Josephine

From: Atkins, Blake

Sent: Wednesday, December 06, 2017 4:39 PM

To: Meyer, John <Meyer.John@epa.gov>; Banipal, Ben <banipal.ben@epa.gov>; Turner, LaDonna <turner.ladonna@epa.gov>; Villarreal, Chris <villarreal.chris@epa.gov>; Sanchez, Petra <sanchez.petra@epa.gov>; Cook, Brenda <cook.brenda@epa.gov>; Gee, Randy <Gee.Randy@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Hah, Josephine <Hah.Josephine@epa.gov>; Crossland, Ronnie <Crossland.Ronnie@epa.gov>; Webster, Susan <webster.susan@epa.gov>

Subject: Question Sets for GAO

Please see attached drafts, in preparation for tomorrow's call with GAO.

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Questions for EPA Regions about Superfund Enterprise Management System (SEMS) National Priorities List (NPL) Data

As part of GAO's engagement on Superfund sites on or near tribal land (code 102047), we are trying to understand how EPA identifies and tracks National Priorities List (NPL) Superfund sites that are on or impacting tribal land.

The attached spreadsheet shows the sites in Region 6 that are on tribal land or impacting federally recognized tribes, based on EPA headquarters data pulled from the SEMS system. It is our understanding that your office did a brief review of these data at the request of the Office of Superfund Remediation and Technology Innovation (OSRTI). We have some questions about these data, as well as some more general questions about how you determine when a site has Native American interest and how you use the available data systems to track these sites.

Identification of Native American interest - General

1. How does your region determine when a Superfund site has Native American interest?

Superfund sites are referred to EPA Region 6 by States and Tribes. Under the National Contingency Plan (NCP), Region 6 conducts much outreach and public notification, requesting comment and public participation in each phase of the Superfund process, from site investigation to remedy selection. Native American interest is easily identified where all or portions of a potential Superfund site are located in Indian Country (see definition, following questions 8 and 9). In these cases, a Tribe may come to Region 6 to express their interest in pursuing Superfund action, or Region 6 may reach out directly to the potentially impacted Tribe. Where Indian Country is nearby or downstream/downgradient from a Superfund site, additional efforts are made to notify Tribes of Superfund activities that may be of interest. Additional outreach efforts include ongoing communication and coordination with tribal organizations and tribal consortia groups, as well as during triannual Regional Tribal Operations Committee meetings, where Region 6 communicates potential sites to be considered for the National Priorities List and Tribes can request presentations regarding the status of specific Superfund site cleanups.

- a. Does the designation of Native American interest mean that the site is on or impacting tribal land?

As described above, Native American interest could mean that the site is on or impacting tribal land; however, Region 6 also includes any site that could potentially impact a tribe in the future (e.g., downstream or downgradient tribes) or any site in which a tribe has expressed an interest in following.

- b. Who within the office makes this determination?

Any member of a site team can make this determination, as reported to and approved by their supervisor and manager in SEMS.

2. Once it is determined that a site has Native American interest, how is this indicated in SEMS?

Once a tribe expresses interest in a Superfund site, the Tribal Interest flag in SEMS is selected and the appropriate Tribe(s) identified.

- a. Who within your office generally makes these changes in SEMS?

Staff members responsible for site activities make changes in SEMS, and such changes are approved by their respective supervisor or manager.

- b. Who within your office has access to add, delete, or edit data in SEMS?

Responsible staff members and Supervisors/Managers have access to add, delete, or edit data in SEMS.

- c. Are there any routine reviews of SEMS data on sites with Native American interest for accuracy and completeness at the regional level?

Region 6 conducts routine reviews of regional SEMS data which would include sites with Tribal Interest. SEMS data is routinely updated and improved, as new data and information becomes available, including for sites with Native American interest.

3. Has your office experienced any difficulties entering Native American interest data or associated tribal variables (such as "on tribal land" or the name of the tribe) into SEMS?

No, Region 6 has not experienced any difficulties entering Native American interest data or associated tribal variables into SEMS.

4. If a site is initially marked as having Native American interest, but at some later point in cleanup, it is determined that the tribe or tribes no longer have interest, is this indicated in the system by removing the Native American interest flag, or in some other way?

As described above in 2b, SEMS data is continually updated, and once it is determined that there is no tribal interest, then Region 6 would remove the Native American interest flag and include documentation in SEMS to support this action.

Accuracy and completeness of attached SEMS data for Region 6

5. Does the attached list of sites accurately and completely capture all NPL Superfund sites that have Native American interest as defined in the SEMS implementation manual? If not, please let us know what sites should be added and/or removed.

The attached list contains all sites that Region 6 is aware of having tribal interest, as recorded in SEMS. The ten specific NPL sites with tribal interest that Region 6 is aware of include:

- 1. Hudson Refinery*
- 2. Jackpile-Paguate Uranium Mine*
- 3. North Railroad Avenue Plume*
- 4. Oklahoma Refining Co.*
- 5. Prewitt Abandoned Refinery*
- 6. Tar Creek (Ottawa County)*
- 7. Tulsa Fuel And Manufacturing*
- 8. United Nuclear Corp.*
- 9. Wilcox Oil Company*
- 10. Homestake Mining Company*

The remaining 21 sites listed on the spreadsheet do not have known tribal interest, but are noted on the spreadsheet as being near (i.e., within 1-10 miles) tribal boundaries. Those specific NPL sites include:

- 1. AT&SF (Albuquerque)*
- 2. Chevron Questa Mine*
- 3. Compass Industries (Avery Drive)*
- 4. Double Eagle Refinery Co.*
- 5. Eagle Industries*
- 6. Fourth Street Abandoned Refinery*
- 7. Fruit Avenue Plume*
- 8. Grants Chlorinated Solvents*
- 9. Hardage/Criner*
- 10. Imperial Refining Company*
- 11. Industrial Waste Control*
- 12. Jasper Creosoting Company Inc.*
- 13. Lee Acres Landfill (USDOl)*
- 14. Mosley Road Sanitary Landfill*
- 15. National Zinc Corp.*
- 16. Pagano Salvage*
- 17. Ruston Foundry*
- 18. Sand Springs Petrochemical Complex*
- 19. South Valley*
- 20. Tenth Street Dump/Junkyard*
- 21. Tinker Air Force Base (Soldier Creek/Building 3001)*

- a. For each site that has Native American interest, are the data correct? If not, please indicate where corrections are necessary.

Review of the data identified two minor errors in SEMS data, which has been corrected for Homestake Mining and Tar Creek, adding additional tribes to the tribal interest list for both sites..

6. Please describe the steps your regional office took to verify the accuracy and completeness of the SEMS data on sites with possible tribal interest that OSRTI headquarters officials asked you to verify for us, including:
 - a. What strategies did you use to ensure accuracy?
 - b. What strategies did you use to ensure completeness?
 - c. With whom, if anyone, did you consult to verify the accuracy of the data?
 - d. Did you utilize any data source other than SEMS to verify the accuracy of the data?

The Region independently verified each site by reviewing site information (SEMS, GIS, EJ Screen) and discussions with site teams. Tribal interest is generally determined early in the site assessment or investigation stage by EPA working with its state and tribal partners and continuing this partnership throughout the Superfund process. For example, regarding the 10 sites with tribal interest, we have worked in coordination with Region 6 tribes throughout the lifetime of the sites and have established positive working relationships with the respective Tribes. The remaining 21 sites are sites that may be near a tribe's current or historic reservation boundaries, but tribes have not expressed interest in these sites.

7. Were there any aspects of the attached SEMS data for which your region was unable to verify accuracy? If so, please describe.

It is important to note that the attached data contained information that was not necessarily available in SEMS, as noted in the footnote regarding the proximity to tribal lands columns. We verified all SEMS data and were generally able to confirm proximity of tribal boundaries to Superfund sites, but were not able to verify exact distances or the proximity ranges (i.e., <1 mile, 1-3 miles, 3-10 miles, etc.) that were included in the spreadsheet.

8. How does your office define "on tribal land"? (Response to both 8 and 9 are included below)
 - a. What geographic information and/or data are used to determine where tribal land boundaries are?

- b. If the site itself is not on tribal land, but the contamination has spread to tribal land, would that be considered “on tribal land” in SEMS?
- 9. The attached data contains a variable for “on tribal property.” How does your office define “on tribal property”?

From the 2017 Superfund Program Implementation Manual: “The On Tribal Property field is used to indicate whether the release of hazardous materials is on Indian country and any other land owned by an American Indian tribe or an Alaskan native entity.”

- a. How does this differ from “on tribal land”?

Use of the terms “tribal land” and “tribal property” in SEMS can create confusion when addressing a site in Region 6 since the term of art used by the court reviewing EPA activities in Oklahoma and New Mexico is “Indian Country”, defined as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the U.S. Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(b) All dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

As a practical matter, Region 6 Superfund uses standard site identification and public participation processes to determine whether a given site is located in whole or in part on Indian Country using relevant data sources, such as Geographic Information Systems, Bureau of Indian Affairs mapping for current and historical ownership information, confirmation with the Tribal Office of former or historical tribal reservation boundaries, and then exchange of information with individual Tribes. State and county property, deed, and tax records may also be obtained and reviewed to inform and refine the extent of Indian Country in connection with a given site. Because the National Contingency Plan definition of “on-site” includes the areal extent of contamination, if contamination runs cross-boundary, extending from private onto tribal land (or onto private from tribal land) at a given site, it would be considered “on tribal land” or “on tribal property” at least in part, and recorded as such in SEMS. As noted above, where one or more tribes express an interest in a site at any point in the National Contingency Plan process to address the site, even though it is not on or near the specific Indian

Country of a tribe, tribal interest is recorded in SEMS and incorporated into public participation activities going forward.

Use of SEMS data

10. How, if at all, does your region use SEMS data pertaining to Native American interest and/or proximity to tribal land?

SEMS is a support tool that allows Region 6 to track tribal interest once they are identified and to communicate with the public the status of sites currently in the SEMS database. SEMS is not used to initially determine whether or not a site has tribal interest, it's merely a way to track progress made at all NPL sites, including sites with tribal interest. For sites that include tribal interest, the site team members work one-on-one with the associated tribe throughout the Superfund process.

TCOTS – use of system and data

11. The SEMS data we received on sites with Native American interest included a column to indicate whether consultation per the 2011 policy had occurred at each site. According to these data, they were pulled from the Tribal Consultation Opportunities Tracking System (TCOTS) active archive on 9/14/17 and underwent review by the regions. Can you please describe how this data was reviewed by your region?

- a. For some records of sites that are indicated as having Native American interest, there are no data as to whether consultation has occurred or not (i.e., blank cells). Do these blank cells indicate that consultation has not taken place?

The TCOTS database was checked by the Region 6 Office of Tribal Affairs and none of these sites are in the database. Most of these sites were active before the development of the 2011 policy and TCOTS, however, consultation and/or coordination took place, consistent with tribal consultation policy. Outreach to tribes at appropriate junctures in the Superfund process has occurred under national and regional Indian Policy and guidance, as well as under the National Contingency Plan requirements for public participation and informal contacts necessary to advance site assessment and response actions. Other sites are active with tribal coordination, but have not been elevated to tribal consultation.

12. At what points in the consultation process does your Regional office begin to enter documents into TCOTS?

Region 6 enters documents into TCOTS after the letters and accompanying documents have been sent to tribal partners.

13. What types of documents do you enter into TCOTS?

Consultation invitation letters and enclosures such as fact sheet and consultation schedule are the types of documents entered into TCOTS.

14. What are the requirements for documents that must be entered into TCOTS?

Documents must be reviewed and concurred by the specific environmental media program (e.g., Superfund). Documents must also be Section 508 compliant. Section 508 is a federal law mandating that all electronic and information technology developed, procured, maintained, or used by the federal government be accessible to people with disabilities.

a. Who within your office enters documents into TCOTS?

The Region 6 Tribal consultation advisor enters documents into TCOTS.

15. Has your office ever run into difficulties entering documents into TCOTS?

Compliance with Section 508 was an issue on one document (not Superfund related), but Region 6 has had no other difficulty entering documents into TCOTS.

Questions specific to Region 6 sites

16. The data indicates that Region 6 added impacted tribes to the Homestake Mining Co. (Acoma Pueblo, Laguna Pueblo) and Tar Creek (Quapaw Tribe of Indians, Peoria Tribe, Ottawa Tribe, Wyandotte Seneca-Cayuga Tribe, Modoc Tribe, Cherokee Nation) site listings. How did the region determine the sites impact these tribes?

As noted above, EPA Region 6 conducts community outreach throughout the course of addressing a site under CERCLA and the National Contingency Plan. In the case of the Homestake Mining Company Site, Region 6 holds periodic public meetings widely advertised in the few media outlets serving the area of the site. Individual tribal members from Laguna and Acoma Pueblos, and later tribal government representatives, attended the meetings and expressed interest in the site, particularly the issue of whether contaminated site ground water may impact Tribal ground water resources downstream or downgradient from the site.

For the Tar Creek site, some of the site is on Tribal land. Additional tribes have been included as their interest has become known to EPA. Addition of tribes into SEMS is not necessarily a determination of impact, but rather identification of tribal interest in

participating as appropriate in ongoing site assessment and response activities, using SEMS as the tracking system.

17. The attached data indicates there are seven sites that are located on tribal land, but that do not have Native American interest (Compass Industries, Eagle Industries, Hardage/Criner, Imperial Refining Company, National Zinc Corp., Sand Spring Petrochemical Complex, and South Valley). Please confirm that these sites do not have Native American interest.

Going back to the definition of "Indian Country," Region 6 does not consider these sites to be "on tribal land." It is unclear at this writing what sources of information and definitions were used to support entries that the seven sites are located on tribal land. As site investigations progress and the area of contamination associated with a given site is delineated, site boundaries may change. In any event, Region 6 has not had any recent indication of tribal interest in these sites. If at any time a tribe does express interest in a site, SEMS will be updated accordingly.

Major response activity (with concomitant public participation) at some of these sites may be concluded, with some listed as construction complete and others deleted from the National Priorities List. As the process under the National Contingency Plan to address a site concludes, so does the frequency of community interaction with EPA, although there are opportunities for public involvement on proposals to delete sites from the National Priorities List when no further remedial action is required at a given site.

18. Additionally, the data includes one site within one mile of tribal land that does not have Native American interest (Tinker Air Force Base) Please confirm that this site does not have Native American interest.

The Tinker Air Force Base site has a long history of EPA response, first under the Resource Conservation and Recovery Act and later under CERCLA. Both programs involve extensive public participation built into the site assessment, remedy selection, and remediation/corrective action processes, affording ample opportunity for tribal and other public input. Region 6 Superfund has not received any recent indication of tribal interest in the Tinker Air Force Base site, either through general public outreach activities, informal contacts with tribes, or formal tribal communication channels such as RTOC.

19. Data indicating whether or not consultation under EPA's 2011 policy has occurred is missing for all sites in Region 6 (column Q). Is this indicative of missing data or does this mean that consultation under the 2011 policy has not occurred?

SEMS is not designed to and does not track all activities associated with a particular site, including each and every tribal contact. With the exception of Jackpile (on tribal land) and Wilcox (near tribal land), all of the sites in column Q were added to the NPL prior to 2011. In the case of Wilcox, some tribes have requested to be informed of site activities, but no tribe has requested consultation for this site under EPA's 2011 policy. In the case

of Jackpile, the Laguna Tribe has requested and Region 6 has conducted formal consultation more than once. In 2010, Region 6 entered into a Memorandum of Understanding (MOU) with Laguna Pueblo setting out consultation and coordination activities in connection with the Preliminary Assessment and Site Investigation EPA committed to conduct concerning the Jackpile Mine. The MOU cited to the 1994 Presidential Memorandum on Government-to-Government Relations with Native American Tribal Governments, the EPA 1984 Indian Policy, the 2009 EPA Tribal Policy, as well as the EPA Region 6 Tribal Consultation Policy Statement (2004) and Elevation Protocol.

As a practical matter, government-to-government consultation pre-dates the 2011 policy in practice. Outreach to tribes at appropriate junctures in the Superfund process has occurred under national and regional Indian Policy and guidance, as well as under the National Contingency Plan requirements for public participation and informal contacts necessary to advance site assessment and response actions.

20. Please describe how EPA determines site proximity to tribal land in Oklahoma, given the unique nature of that state's former reservations.

Indian country within Oklahoma is made up primarily of lands held in trust by the US for the benefit of a Tribe and individual allotments that are either held in trust or restricted. Consistent with the definition of "Indian country," EPA treats as reservations trust lands validly set aside for the use of a tribe even if the trust lands have not been formally designated as a reservation. Since a tribal trust land and allotments are typically located within the tribe's "former reservation area," the Superfund program first consults existing GIS data showing those boundaries, and then with the regional Tribal Office for additional maps and confirmation. Furthermore, triannual Regional Tribal Operations Committee (RTOC) meetings provide an opportunity for Superfund staff to communicate with Oklahoma Tribes to identify tribal lands that could be impacted by current or proposed NPL sites. The Region also communicates with tribes who are part of the Inter-Tribal Environmental Council (ITEC) to get input on Oklahoma tribal interests and associated proximity to tribal lands. Region 6 Superfund personnel are in regular communications with the tribes because they are valued stakeholders who are heard, especially on issues such as confirming tribal lands boundaries. Realistically, if a site presents a tribal boundary issue, the site team would be talking continuously to their tribal counterparts to work it out.

21. Data from EPA indicates there are sites that affect the Navajo Nation in both regions 6 and 9. How does EPA divide responsibility for sites affecting the Navajo Nation between Regions 6, and 9?

Agency delegations of authority from Headquarters to the Region 6 and Region 9 offices provide the basic framework within which the respective regional offices operate. Region 6 interaction with Navajo is largely based on the 1991 MOU with Region 9 (see

attached). In addition, Regions 6 and 9 work out site-specific arrangements for individual sites as needed. For example, Region 6 has a Cooperative Agreement with the Navajo Nation for two NPL sites in New Mexico, the United Nuclear Corporation Site in Church Rock and the Prewitt Abandoned Refinery Site in Prewitt, sites adjacent to Navajo land.